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June 20, 2002

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W.
Washington DC 20554

Re: Qwest Applications, WC Docket No. 02-148

Dear Ms. Dortch:

On June 19, 2002, Megan Doberneck, William Cob, Martha Sessums, and the undersigned, on behalf of Covad Communications Company, made an *ex parte* presentation to the following Commission staff: Kimberly Cook, Daniel Shiman, Marcy Greene, Jon Minkoff, Michael Engel, Guy Benson, Ken Lynch, Tania Cho, Sharon Lee, Steve Morris, Michael Carowitz, and Elizabeth Yockus. In the course of its presentation, Covad provided Commission staff a preview of the comments it would be filing in opposition to Qwest's long distance applications.

In particular, Covad advised Commission staff that Qwest, although close to checklist compliance, has not yet completed the work necessary to satisfy the statutory requirements for entry into the long distance market. Specifically, Covad highlighted the following current deficiencies with Qwest's applications:

- (1) Linesharing pricing. Qwest proposed a TELRIC-compliant loop cost to the Colorado commission, reflected Qwest's imputation of zero loop cost to its own retail DSL offerings. The Colorado Commission rejected Qwest's proposal, and ordered Qwest to charge \$4.89 for the loop portion of the linesharing UNE. The \$4.89 figure was not proposed by Qwest, nor is it supported by the record before either the state commission or this Commission. In short, any loop price of greater than \$0 is a facial violation of the Commission's TELRIC pricing methodology. Qwest's failure to charge \$0 for the high frequency portion of the loop violated the UNE pricing requirements of the competitive checklist.
- (2) Loop qualification/loop makeup information. KPMG's test 12.7 examined only whether loop makeup information actually used by Qwest retail ordering personnel is made available to CLECs, and did not examine whether all loop makeup information actually available in Qwest's network (regardless of whether Qwest retail staff uses it) is made available to CLECs. This testing failure does nothing to ensure that Covad is able to access all loop information it needs in order to market services; rather, it only ensures that Covad has access to the information it would need to market Qwest retail services. Covad believes that it is not being provided access to

all relevant loop makeup information that is available in Qwest's network. At minimum, Covad should be entitled to an audit of Qwest's LMU. For this proceeding, Qwest must prove to the Commission that all loop makeup information available in its network is actually made available to Covad through nondiscriminatory means.

- (3) Human Error. The majority of Covad's orders are not processed in a fully automated manner by Qwest's ordering OSS. As a result, most Covad orders (greater than 60%) are processed manually by Qwest. The Commission must closely examine whether Qwest is discriminating against Covad by failing to make automated order processing available. The competitive significance of this failure is starkly revealed by KPMG's OSS test, which found that Qwest manual processing of CLEC orders resulted in a staggering 15% error rate. In short, Qwest's failure to provide automated ordering capabilities, coupled with a monumental 15% error rate, denies Covad the ability to compete effectively with Qwest.
- (4) Order completion notices (SOCs). Covad has recently discovered that Qwest automatically transmits a SOC to Covad for linesharing orders on the due date, whether or not the work has actually been completed to provision the UNE. The SOC notice issuance not only notifies Covad (erroneously) that the work is complete, it also is used to measure Qwest's on-time UNE performance and any penalties due. In other words, Qwest is simply relying on an automatic computer generated completion notice, not the actual fact of completion of the UNE order, as a measure of whether it completed the UNE order on time. Qwest has effectively established a system that insulates it from actual inquiry into its UNE performance.
- (5) Qwest's new build and held order policy. Qwest permits its retail customers to wait for available facilities, should facilities not be available at the time the retail customer's order is submitted. Qwest does not permit its wholesale customers to do the same. Thus, Qwest effectively reserves all new facilities for its own customers, because those customers will be in queue for such facilities, whereas Covad's customers are not permitted into such a queue. In order to avoid the appearance of discrimination, Qwest immediately cancels any CLEC orders where a facility is not immediately available, such that performance metrics will not track how frequently a CLEC order is denied for lack of available facilities (performance metrics tracking rejects do not count facilities rejects, providing Qwest an incentive to reject as many orders for facilities reasons as it possibly can). Covad experiences facilities rejects in certain months of upwards of a third of the orders it submits. In Montana, Qwest proposed SGAT language that, in Covad's view, would alleviate much of these concerns about the held order policy. Qwest must adopt the same procedure throughout the five states that are the subject of the pending applications. Specifically, Qwest's policy in Montana states:

“Lack of Facilities; Priority Right to Facilities. In the event Qwest notifies CLEC that facilities ordered are not available from Qwest at the time of the order, Qwest shall maintain the order as pending for a period of thirty (30) business days. If facilities become available to fill the order within that thirty (30) business day period, Qwest shall notify the CLEC of such availability. CLEC and Qwest acknowledge that the availability of facilities hereunder is on a first come, first served basis. Any

facility orders placed by any other provider, including Qwest, which predate CLEC's order shall have priority in any facilities made available under the terms of this section."

Respectfully submitted,

/s/

Jason D. Oxman
Assistant General Counsel
Covad Communications Company